

MDR Tracking Number: M5-05-1683-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 titled Medical Dispute Resolution of a Medical Fee Dispute, and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 2-14-05.

The IRO reviewed office visits, electrical stimulation, gait training, group therapeutic procedures, chiropractic manipulation, DME, therapeutic exercises, and ultrasound.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the majority of the medical necessity issues. The IRO deemed that all office visits (99213 & 99214) and all chiropractic manipulations (98940) under dispute were medically necessary. The manual therapy technique (97140) on 8-27-04 was medically necessary. The electrical stimulation (97032) and ultrasound (97035) from 6-18-04 to 7-1-04 and again from 7-26-04 to 8-11-04 were medically necessary. One set of electrodes (E1399) on 7-18-04 was medically necessary **in the amount of \$681.62**. The IRO agreed with the previous adverse determination that the remaining services in dispute were not medically necessary. Consequently, the requestor is not owed a refund of the paid IRO fee.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO Decision.

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division. On 3-4-05, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14 days of the requestor's receipt of the Notice.

Code 99080-73 billed for dates of service 5-7-04, 6-14-04, 7-21-04, and 8-23-04 was denied as "V – unnecessary medical"; however, per Rule 129.5, the TWCC-73 is a required report and is not subject to an IRO review. The Medical Review Division has jurisdiction in this

matter. The required reports were billed in accordance with the rule; therefore, **recommend reimbursement of \$15.00 x 4 days = \$60.00.**

### **ORDER**

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the Respondent to pay \$741.62 as outlined above for dates of service 5-7-04 to 8-23-04.

- in accordance with Medicare program reimbursement methodologies for dates of service on or after August 1, 2003 per Commission Rule 134.202 (c);
- In accordance with TWCC reimbursement methodologies regarding Work Status Reports for dates of service on or after August 1, 2003 per Commission Rule 134.202 (e)(8);
- plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this Order.

This Order is hereby issued this 10th day of May 2005.

Medical Dispute Resolution Officer  
Medical Review Division  
Enclosure: IRO Decision

### **MEDICAL REVIEW OF TEXAS**

[IRO #5259]

**3402 Vanshire Drive**

**Austin, Texas 78738**

**Phone: 512-402-1400**

**FAX: 512-402-1012**

### **NOTICE OF INDEPENDENT REVIEW DETERMINATION**

**REVISED 4/12/05**

|  |                         |
|--|-------------------------|
| TWCC Case Number:                                      |                         |
| MDR Tracking Number:                                   | M5-05-1683-01           |
| Name of Patient:                                       |                         |
| Name of URA/Payer:                                     | Houston Pain & Recovery |
| Name of Provider:<br>(ER, Hospital, or Other Facility) | Houston Pain & Recovery |
| Name of Physician:<br>(Treating or Requesting)         | Ramiro Torres, DC       |

March 28, 2005

An independent review of the above-referenced case has been completed by a chiropractic doctor. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by Texas Medical Foundation, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

Medical Review of Texas (MRT) hereby certifies that the reviewing physician is on Texas Workers' Compensation Commission Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to MRT.

Sincerely,

Michael S. Lifshen, MD  
Medical Director

cc: Texas Workers Compensation Commission

## CLINICAL HISTORY

Documents Reviewed Included the Following:

1. Notification of IRO Assignment, Table of Disputed Services and Carrier EOBs
2. Concentra notes, including therapy and rehabilitation, dated 5/9/03, 5/12/03, 5/13/03, 5/20/03, 5/27/03 and 10/24/03
3. Initial orthopedic evaluation notes, dated 9/11/03 and 9/18/03
4. Lumbar x-ray report, dated 9/11/03
5. Employer's First Report of Injury, dated 9/16/03
6. Lumbar MRI report, dated 9/16/03
7. Copy of approved TWCC-53, "Change of Treating Doctor," dated 02/28/04
8. Treating doctor initial handwritten "History/Progress Notes" and completed examination form, dated 3/4/04
9. Treating doctor of chiropractic "Daily Soap Notes," "Current Treatment Plans" and "Rehab Sheets," multiple dates
10. Pain management initial evaluation notes, dated 4/26/04
11. Follow up pain management notes, dated 5/20/04 and 7/1/04
12. File review from orthopedic surgeon, dated 6/4/04
13. Operative report of ESI, dated 6/15/04
14. Copies of CMS 1500 billing forms and TWCC-62s from carrier
15. Copies of completed TWCC-73s, multiple dates
16. Functional Capacity Evaluation, dated 8/17/04
17. "Position Statement" submitted by treating doctor, undated

Patient is a 56-year-old male truck driver who, on \_\_\_\_, jumped out of his truck in his usual fashion, but after doing so, developed lower back and left leg pain. He was initially seen by Concentra: x-rays were taken (no report available, treating doctor's notes state they were negative), he received a full-duty release to work on 5/27/03, and on the same date, was declared MMI with a 0% whole-person impairment.

On 9/5/03, the patient experienced an acute return in his symptoms, presented himself to the emergency room, was treated, released and referred to an orthopedic specialist. An MRI was taken on 9/16/03 that revealed a large extruded disc on the left at L5-S1 with effacement of the left S1 nerve root. On 11/26/03, an EMG/NCV revealed a mild acute left S1 radiculopathy, but by 1/14/04, the patient was reportedly neurologically intact without evidence of tension signs.

In approximately mid-February 2004, after coughing hard, the patient again experienced marked lower back and left leg pain, so he obtained treating doctors and began with chiropractic care and physical therapy on 03/04/04. He received epidural steroid injection on 6/16/04, followed by post-injection chiropractic and physical therapy.

#### REQUESTED SERVICE(S)

Established office visits, levels I, II, III and IV (99211, 99212, 99213 and 99214, respectively), electrical stimulation, attended (97032), neuromuscular reeducation (97112), manual therapy technique (97140), gait training (97116), therapeutic exercises (97110), therapeutic exercises, group (97150), chiropractic manipulative therapy, spinal 1-2 areas (98940), durable medical equipment (E1399), and ultrasound (97035) for dates of service 05/10/04 through 08/30/04.

#### DECISION

The established office visits, levels III and IV (99213 and 99214) are approved, as are the chiropractic manipulative therapies, spinal 1-2 areas (98940) and the manual therapy technique (97140) on date of service 8/27/04. The post-injection attended electrical stimulations (97032) and the ultrasound therapies (97035) are only approved from 6/18/04 through 7/1/04, and then again from 7/26/04 through 8/11/04, along with one set of dispensed electrodes (durable medical equipment E1399) dispensed on 6/18/04.

All remaining services and procedures, *including any ultrasound or attended electrical stimulation therapies outside the specified date range above*, are denied.

### RATIONALE/BASIS FOR DECISION

First of all, according to a study published in *Spine*<sup>1</sup>, chiropractic spinal manipulation yielded the best results for chronic spinal pain. In addition, on 6/16/04 and on approximately 7/26/04, the medical records documented that the patient received epidural steroid injections. Therefore, spinal manipulation, and as well as six visits (2 weeks) of post-injection physical therapy following each injection were warranted and supported as medically necessary. And, since one of the therapies provided was electrical stimulation, this would also support the medical necessity of dispensing one set of electrodes.

However, in terms of the gait training service (97116), nothing in either medical record specifically referenced any gait pathology that would otherwise warrant the performance of this procedure. In fact, the initial examination notes by the treating doctor of chiropractic were devoid of any mention of a gait alteration, and the patient's neurological examination revealed "intact sensory LE bilaterally, +2 bilateral reflexes LE, and muscle strength 5/5 throughout LE bilaterally." In addition, the pain management medical doctor in his initial evaluation of 4/26/04 wrote, "gait is within normal limits." Therefore, the medical necessity of this service was unsupported.

In regard to the neuromuscular reeducation services (97112), there was also nothing in either the diagnosis or the physical examination findings on this patient that demonstrated the type of neuropathology that would necessitate the application of this service. According to a Medicare Medical Policy Bulletin<sup>2</sup>, "This therapeutic procedure is provided to improve balance, coordination, kinesthetic sense, posture, motor skill, and proprioception. Neuromuscular reeducation may be reasonable and necessary for impairments which affect the body's neuromuscular system (e.g., poor static or dynamic sitting/standing balance, loss of gross and fine motor coordination, hypo/hypertonicity). The documentation in the medical records must clearly identify the need for these

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<sup>1</sup> Giles LGF, Muller R. Chronic Spinal Pain - A Randomized Clinical Trial Comparing Medication, Acupuncture, and Spinal Manipulation. *Spine* 2003; 28:1490-1503.

<sup>2</sup> HGSA Medicare Medical Policy Bulletin, Physical Therapy Rehabilitation Services, original policy effective date 04/01/1993 (Y-1B)

treatments.” In this case, the documentation failed to fulfill these requirements, rendering the performance of this service medically unnecessary.

With regard to the established office visits, levels I and II (99211 and 99212), these services were reflected as components of the pre-, intra- and post-encounter service already reported as chiropractic manipulative therapy on those dates, according to CPT<sup>3</sup>. Therefore, it would be duplicative and medically unnecessary to repeat this service, particularly amidst an already-established treatment plan. However, in terms of the established office visits, levels III and IV (99213 and 99214), the medical records documented that the doctor performed reevaluations on those dates, thereby justifying the medical necessity for those services.

In terms of the therapeutic exercises, individual or group (97110 and 97150, respectively), it is generally understood that physical medicine treatment requires ongoing assessment of a patient’s response to prior treatment and modification of treatment activities to effect additional gains in function. However, in this case, the treating doctor merely made mention in his daily records that “range of motion still restricted” or “range of motion improving,” neither of which provided an adequate, objective measurement of improved patient functioning on which to base the medical necessity for continued care. In addition, continuation of an unchanging treatment plan, performance of activities that can be performed as a home exercise program and/or modalities that provide the same effects as those that can be self applied are not indicated. Any gains obtained in this time period would have likely been achieved through performance of a home program.

Therapeutic exercises may be performed in a clinic one-on-one, in a clinic in a group, at a gym or at home with the least costly of these options being a home program. A home exercise program is also preferable because the patient can perform them on a daily basis. On the most basic level, the provider failed to establish why it remained necessary to perform the exercises on

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<sup>3</sup> CPT 2004: *Physician’s Current Procedural Terminology, Fourth Edition, Revised*. (American Medical Association, Chicago, IL 1999),

a one-on-one, supervised basis (as opposed to transitioning to a home program), particularly when the current medical literature states, "...there is no strong evidence for the effectiveness of supervised training as compared to home exercises."<sup>4</sup> Moreover, although the extensive one-on-one therapy might have been medically necessary initially, the records failed to support their medical necessity past 5/10/04.

And finally, with regard to the passive treatments outside the approved post-injection protocol, namely ultrasound (97035) and attended electrical stimulation (97032), it is the position of the Texas Chiropractic Association<sup>5</sup> that it is beneficial to minimize dependency upon passive forms of treatment/care since studies have shown a clear relationship between prolonged restricted activity and the risk of failure in returning to pre-injury status. The TCA Guidelines also state that repeated use of passive treatment/care tends to promote physician dependence and chronicity. Therefore, the medical necessity of these services after 8 weeks of utilization, and considering the patient response and status at that time, was not supported.

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<sup>4</sup> Ostelo RW, de Vet HC, Waddell G, Kerchhoffs MR, Leffers P, van Tulder M, Rehabilitation following first-time lumbar disc surgery: a systematic review within the framework of the cochrane collaboration. Spine. 2003 Feb 1;28(3):209-18.

<sup>5</sup> Quality Assurance Guidelines, Texas Chiropractic Association.